

**FORM FOR USE IN APPLICATIONS**

**FOR HABEAS CORPUS UNDER 28 U.S.C. § 2254**

**Name** Ray DAVID HEATH 3:05CV936-F

**Prison Number** 217344

**Place of Confinement** VENTRESS CORRECTIONAL FACILITY  
POST OFFICE BOX 767, 36016

**United States District Court** medial **District of** Montgomery

**Case No.** \_\_\_\_\_  
(To be supplied by Clerk of U. S. District Court)

Ray DAVID HEATH, PETITIONER  
(Full Name) (Include name under which you were convicted)

WARDEN, J. C. GILES, RESPONDENT  
(Name of Warden, Superintendent, Jailor, or authorized person having custody of Petitioner)

and

**THE ATTORNEY GENERAL OF THE STATE OF** ALABAMA  
\_\_\_\_\_, ADDITIONAL RESPONDENT.

(if petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.)

**PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN  
STATE CUSTODY**

**INSTRUCTIONS--READ CAREFULLY**

- (1) This petition must be legibly handwritten or typewritten and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

The Judicial Conference of the United States has adopted, effective 1/1/83, the 8½ x 11 inch paper size standard for use throughout the federal judiciary and directed the elimination of the use of legal size paper. All pleadings, etc. filed after 12/31/82 must be on 8½ x 11 inch paper, otherwise we cannot accept them.

- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary filing fee, you may request permission to proceed in forma pauperis, in which event you must execute the declaration on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and two copies \* must be mailed to the Clerk of the United States District Court whose address is:

P.O. Box 711  
Montgomery, Alabama 36101

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- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

**\*If you are proceeding in forma pauperis, only the original petition needs to be filed with the Court.**

PETITION

FORMA pauperis  
"enclosed"

1. Name and location of court which entered the judgment of conviction under attack TWENTY SIXTH JUDICIAL CIRCUIT, Russell Co, AL
2. Date of judgment of conviction \_\_\_\_\_
3. Length of sentence 30 YEARS Sentencing Judge Hon. George Green

4. Nature of offense or offenses for which you were convicted: unlawful Distribution of marijuana, and unlawful Distribution of marijuana, and possession 1st Degree.

5. What was your plea? (check one)

- (a) Not guilty ( )  
(b) Guilty (✓)  
(c) Nolo contendere ( )

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: \_\_\_\_\_

6. Kind of trial: (Check one)

- (a) Jury ( )  
(b) Judge only (✓)

7. Did you testify at the trial? Yes ( ) No (✓)

8. Did you appeal from the judgment of conviction? Yes (✓) No ( )

9. If you did appeal, answer the following:

- (a) Name of court Circuit Court of Russell County AL  
(b) Result no opinion, just Denied  
(c) Date of result none

If you filed a second appeal or filed a petition for certiorari in the Supreme Court, give details: none

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes (x) No ( )

11. If your answer to 10 was "yes", give the following information:

- (a) (1) Name of court Russell County Circuit Court of AL  
(2) Nature of proceeding Appeal

(3) Grounds raised There's 9, Nine Grounds That were presented see attachment and see 12, A, B, C, And D.

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No (✓)

(5) Result no opinion, Denied

(6) Date of result none

(b) As to any second petition, application or motion give the same information:

(1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No ( )

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(c) As to any third petition, application or motion, give the same information:

(1) Name of Court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No ( )

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(d) Did you appeal to the highest state court having jurisdiction the result of any action taken on any petition, application or motion:

(1) First petition, etc. Yes ( ) No (✓)

(2) Second petition, etc. Yes ( ) No (✓)

(3) Third petition, etc. Yes ( ) No (✓)

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not: The Circuit Court will not follow the Rules of Court, all I receive is a denial of all Petitions and motion, with out a statement of Opinion and I cant do any thing unless the Russell County court let my Appeal take its course For further Review I did inform the Court of my Appeal

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

**CAUTION:** In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. As to all grounds on which you have previously exhausted state court remedies, you should set them forth in this petition if you wish to seek federal relief. If you fail to set forth all such grounds in this petition, you may be barred from presenting them at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted all your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not check any of the grounds listed below. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

- A. Ground one: The Constitution of the United States or of the State of Alabama Requires A New Trial, A New Sentence Proceeding, or Other Relief  
 Supporting FACTS (tell your story briefly without citing cases or law):  
 at Sentencing I asked to withdraw my plea before sentencing and after, see, (R. Page 28, 23 then 25, and Page 29, 1 then 6). I asked the courts how can I withdraw my plea also I never had a hearing to consolidate offenses also see (C, 11, 65.) The Court states I was in open court with Attorney John Britton and stated things I was never in open court for an arraignment or any plea hearing and never signed any waiver, also I was denied an a complete transcripts of the Records on direct appeal and any other appeal Also I was denied to chose my own Attorney before my plea hearing or indictment, This is newly discovered material I Received in 2003, see (Attachments)
- B. Ground two: TRIAL Counsel, Hon John Britton Rendered Ineffective assistance of Counsel.  
 Supporting FACTS (tell your story briefly without citing cases or law):  
 Trial Counsel was City Attorney and neglected to suppress and failed to perfect my asking to withdraw my plea, and failed to perfect appeal and neglected to comply to two notice sent from Criminal Court of appeals telling him to file form 26 and 1C of my appeal I filed while in the County Jail. see, (Attachments)
- C. Ground three: APPEAL Counsel, Hon Charles E. Floyd III Rendered, ineffective assistance of counsel.  
 Supporting FACTS (tell your story briefly without citing cases or law):  
 for failure to perfect appeal when Record in plain view that trial Counsel was ineffective, also Record shows evidence illegally seized in violation of the 4<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments also Records show that the court was without Jurisdiction to Run enhancement's Concurrent with each other or with the base sentence, also the Record shows the state Breached The Plea agreement, see (C, 24) it states The State may void This agreement if I file any motion or petition, Hon Charles E Floyd III is ineffective for filing a no merit Brief, on the Records in plain view That I haven't had a Fair trial.  
 "Proceedings" see (Attachments)



D. Ground four: The Court was without Jurisdiction to Run enhancements 13A-12-250, and 13A-12-270 currently.  
 Supporting FACTS (tell your story briefly without citing cases or law):  
In case CC-01-30 I Received 20 years plus two enhancements, The school, and housing and in Case CC-01-36 ct 1, I Received 20 years plus two enhancements as CC-01-30, and 30 years for CC-01-36 ct 2, and CC-01-36 ct 1, and ct 2 was Run current with case CC-01-30. That The sentence was not in accordance with the statutes, even though no objection was made at trial.

There's other issues That were presented see (attached papers.)

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal state briefly what grounds were not so presented, and give your reasons for not presenting them: all The Grounds and all issues presented has only been presented to the Circuit Court of Russell County AL, and denied without opinions, and the Circuit Court Refuse to let my appeal take its course. This is the Reason I can't present the Case at hand.

see (Attachments)

14. Do you have any petition or appeal now pending in any court, wither state or federal, as to the judgment under attack? Yes (☒) No ( )

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Hon Connie Cooper  
Phenix City AL

(b) At arraignment and plea Hon John Britton  
Phenix City AL

(c) At trial \_\_\_\_\_

(d) At sentencing Hon John Britton  
Phenix City AL

(e) On appeal Hon Charles Floyd III  
Phenix City AL

(f) In any post-conviction proceeding NA

(g) On appeal from any adverse ruling in a post-conviction proceeding: NA

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes (☒) No (☐)

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes (☐) No (☒)

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

(b) And give date and length of sentence to be served in the future: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes (☐) No (☐)

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on 9/28/05  
(date)

Roy David Heath  
Signature of Petitioner 217344.



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2005 OCT 3

A Ground one:-

(1) Petitioner asked to withdraw his Plea, before, and after sentencing see, (R. Page 28, 23 True 25, and Page 29, 1 True 6 ----

(2) Petitioner never had a chance to be heard, The courts ordered Consolidation without a hearing, The hearing was set after The Plea agreement see Exhibit 1,

(3) Petitioner never interced in Court at any arraignment on 2/16/2001 or 2/20/2001, see (C, 11, and 65) and Exhibit 2,

(4) Petitioner was deprived Counsel of one's choice. For The Plea agreement and The indictment. see Exhibit 3, and 4, Petitioner never Filed any motion in The year of 2000,

(5) Petitioner was denied a Transcript of entire voir-diee Proceedings, see Exhibit, 3, 4, 6, 7, and 8.

with these Exhibits, Petitioner shows Actual INNOCENCE, and a Fundamental miscarriage of Justice and neglect For Procedural Default..

Exhibit 3, and 4, shows Petitioners Due process Rights Violated.

Exhibit 5, and 6, are The First indictment, The arrest does not match The affidavit statements, and with This Circumstance The other indictment are of a illegal search.

Exhibit 7, and 8, shows neglect of Trial counsel, Hon John Britton Failed To comply To a legal matter.

(6) Petitioner with The above Exhibits shows Petitioner was also denied a complete Transcript on direct Appeal..

with The Ground (A) 1 Then 6, shows Petitioner Constitutional Right were Violated and This case should be Required A New Trial, A New sentence proceeding or A procedural Default or other Relief.....

B Ground Two.

(1) TRIAL ATTORNEY was City Counsel at the time of Representation

(2) TRIAL ATTORNEY did know Petitioner wanted to withdraw his Plea,

(3) TRIAL ATTORNEY Failed To suppress any evidence

(4) TRIAL ATTORNEY Failed To comply to Two notice sent From Appeals Court, see Exhibit 7 and 8,

Ground (B) 1 Thru 4 are proof from The Record and also Exhibits, Petitioner was denied Due process of law and This case should be a Default...

C. Ground Three,

(1) Appeal Counsel Failed to file ineffective assistance of TRIAL counsel

(2) Failed To suppress Evidence That were illegal

- (3) Failure To File The court was without Jurisdiction To Run enhancement Concurrent, see Exhibit 9, 10, and 11.
- (4) Failure To File That The state Breached The Plea agreement. Exhibit 11, states if Petitioner Files any motion or Petition and EXC. The state may Void The Promiss,
- (5) Appeal counsel Filed a no merit Brief and The Records in plain View of Due process and violation of Petitioners Constitutional Rights.

Ground Three with all The Facts and Circumstance This case should be a Procedural Default, The Records in plain view That Petitioner never had a Fair chance or a Fair Trial Proceedings.

#### D Ground Four

- (1) are presented in the above

issues, with Facts.

E Ground Five

(1) show's petitioner did File a Post-trial motion with Appeal and affidavits of proof. The court denied without OPionons on all issues see EXhibit 12, ---

(2) Petitioner Filed a motion for The Court to vacate his Appeal so it can take its course for Further review. The circuit Court of Russell county Refues To let appeal Take its course for Further review, and "will not" answer any issues presented see EXhibit 13, --

The case at hand should be Remanded or Reviewed for Procedural Default---

If Petitioner Files any motion or Petition, all Petitioner gets is a denial, all Petitions weee Filed with Proof and affidavits - - - - see The Records.

Respectfully

Roy David Heath  
PRO. S 217344.

Roy David Heath  
217344

Date 9/28/05

Ventress, CORR, Fact,  
Post office Box 767.